

M/S.G Square Layout Private Limited vs Page 1 Of 26

ID: F2J-C-2225 **Court:** Madras High Court
Case: CrI.O.P.No.22880 of 2025 **Date:** 2025-10-07

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[Cites 27, Cited by 0]

Madras High Court M/S.G Square Layout Private Limited vs Page 1 Of 26 on 7 October, 2025 Author: N. Sathish Kumar Bench: N. Sathish Kumar CrI.O.P.No.22880 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CrI.O.P.No.22880 of 2025 and CrI.M.P.Nos.15624 & 15625 of 2025

1.M/s.G Square Layout Private Limited, (PAN : AAHCG9060E) represented by its Directors, Shri. Ramajayam – Director Smt. Sreekala – Director Having registered office at : Door No.98, Flat No.14, Harrington Apartments, 3rd Floor, Harrington Road, Chetpet, Chennai – 600 031.

2.Shri Ramajayam, Director – M/s.G Square Layout Private Limited, Door No.92/21, Casuarina Drive, Sree Kapaleeshwar Nagar, Injambakkam S.O., Kancheepuram, Chennai – 600 115.

3.Smt Sreekala Door No.92/21, Casuarina Drive, Sree Kapaleeshwarar Nagar, Neelankarai, Injambakkam, Sholinganallur, Chennai – 600 041. ...
Petitioners

Vs.

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CrI.O.P.No.22880 of 2025

The Deputy Commissioner of Income Tax, Central Circle-1(2), Investigation Building, Nungambakkam, Chennai – 600 034. ... Respondent

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita to call for the records and quash the complaint in E.O.C.C.No.5 of 2025 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences)-II, Egmore, Chennai.

For Petitioners : Mr.K.Suresh Babu

For Respondent : Ms.M.Sheela Senior Standing Counsel assisted by Mr.H.Siddarth Junior Standing Counsel

ORDER

This Criminal Original Petition has been filed to quash the complaint in E.O.C.C.No.5 of 2025 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences)-II, Egmore, Chennai, for the offence under Section 276C(2) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act” for brevity). Page 2 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 2.It is the case of the respondent/complainant that A1 Company has filed returns of income for AY 2023-24 belatedly under Section 139(4) of the IT Act on 31.12.2023, declaring a total income of Rs.27,31,95,740/-. As per the return of income filed by A1 Company, the total tax liability was Rs.9,16,30,141/-. Out of the same, the Company had TDS Credit of Rs.43,48,624/- and the self-assessment tax to be paid at the time of filing of returns was to the tune of Rs.8,72,81,520/-. The Company filed the return of income on 31.12.2023 without paying the admitted tax liability of Rs.8,72,81,520/- as mandated under Section 140-A of the IT Act. Therefore, a demand was quantified at Rs.8,72,81,520/- vide order dated 31.12.2023 requiring the assessee to pay the demand within 30 days from the date of service and an e-mail was also sent on 31.12.2023. However, the Company has not paid the tax dues. It is the case of the complainant that the A1 Company, inspite of having sufficient resources and capability, has exhibited wilful intention to evade payment of tax. Therefore, notices were issued to the accused Company by the Assessing Officer on 08.10.2024 and 08.11.2024 requiring the accused Company to make payment of the outstanding tax liability. Despite the same, the accused Page 3 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 Company and its directors chose to remain evasive and have deliberately not paid the admitted tax liability, thereby constituting an offence under Section 276C(2) of the IT Act. Therefore, a show cause notice was issued on 02.12.2024 to the accused company and its directors, calling for an explanation. In response to the same, an authorised representative of the Company appeared on 12.12.2024 and submitted a written explanation inter alia stating that the funds were locked in non-liquifiable assets and therefore, the company was unable to remit the self-assessment tax till date. Not satisfied with the explanation, after obtaining sanction from the Sanctioning Authority, a complaint came to be filed as against the accused Company and its directors for the offence under Section 276C(2) of the IT Act, which was taken on file by the learned Additional Chief Metropolitan Magistrate (Economic Offences)-II, Egmore, Chennai, in E.O.C.C.No.5 of 2025. Challenging the same, the present Criminal Original Petition has been filed. 3.The complaint is sought to be quashed mainly on the ground that mere delayed payment of tax would not attract Section 276C(2) of the IT Act. Learned counsel for the petitioners would submit that, after the Page 4 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 demand notice, the petitioner Company has paid a sum of Rs.3,85,19,770/- on 19.12.2024 and further, a sum of Rs.4,87,61,750/- on 13.01.2025 against the pending demand for AY 2023-24. Therefore, it is his contention that, even before cognizance was taken, the petitioners have settled the entire tax liabilities. Further, it is his contention that, when the entire tax has already been paid, it cannot be construed as wilful attempt to evade tax payment. It is his further contention that, in order to attract the offence under Section 276C(2) of the IT Act, mens rea should be present. Unless the same, it cannot be presumed that there is an attempt to evade tax. Since the Department has not imposed any penalty on the accused for non-payment

of tax on time, the respondent cannot prosecute the petitioners for the same substantive act which is categorized as an offence under Section 276C(2) of the IT Act. Hence, he seeks for quashment of the complaint. 4. Whereas, the learned Senior Standing Counsel appearing for the respondent/complainant would submit that, the A1 Company, inspite of having voluminous assets to the tune of Rs.129,11,76,798/- as on the financial year ending for AY 2023-24 and having earned a net profit of Rs.26,23,99,201/-, has wilfully chosen not to pay the admitted tax liability Page 5 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 of Rs.8,72,81,520/- at the time of filing the return on 31.12.2023, thereby, clearly attracting the provisions of Section 276C(2) of the IT Act. It is his contention that the payment of tax made eventually after issuance of notice cannot absolve the prior non-compliance, and the proof of payment of entire tax ought to have been furnished at the time of filing of the return as per Section 140-A of the IT Act. It is her further contention that the non- initiation of penalty proceedings does not lead to a presumption that the wilful default in payment can be condoned. It is her further contention that it is for the petitioners to establish that they did not have the mens rea in causing wilful default in payment of tax. Hence, she opposed the petition. 5.I have perused the entire materials available on record. 6.It is not in dispute that the A1 Company has filed its returns of income for the AY 2023-24 belatedly on 31.12.2023. The allegations in the complaint are to the effect that the assessee, while filing its returns of income for the AY 2023-24 on 31.12.2023, did not pay the admitted tax liability of Rs.8,72,81,520/-. Notices have been issued to the Company on 08.10.2024 and 08.11.2024, to pay its tax dues for the AY 2023-24. Despite Page 6 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 the same, the tax has not been paid. Thereafter, a Show Cause Notice has been issued on 02.12.2024 calling upon the assessee to pay the admitted tax liability. A written explanation has been submitted by the A1 Company on 12.12.2024, stating that, for an offence under Section 276C(2) of the IT Act, a positive act by the accused must be established; that though their Company held assets as on 31.03.2023, those assets were not readily liquefiable/realizable and therefore, they could not remit the tax while filing the return of income; that the non-payment of tax within the prescribed time does not represent a wilful attempt to evade payment. Thereafter, it is relevant to note that the A1 Company has paid a sum of Rs.3,85,19,770/- on 19.12.2024 and a further sum of Rs.4,87,61,750/- on 13.01.2025 towards the tax liability for the AY 2023-24 and the Challan Receipts for the same are enclosed in the typed set of papers. Therefore, the assessee has paid the entire tax liability for the AY 2023-24 by 13.01.2025. Thereafter, the complaint has been filed on 22.01.2025 after obtaining sanction from the Sanctioning Authority, as against the A1 Company and its directors, for wilfully not paying the taxes despite two notices and a show cause notice, for the offence under Section 276C(2) of the IT Act. Page 7 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 7.It is not in dispute that the entire admitted tax liability of Rs.8,72,81,520/- has been paid by the petitioners. Now, the only question arises for consideration is as to whether the petitioners can be prosecuted for wilfully evading the payment of tax under Section 276C(2) of the Income Tax. This Court, in S.P.Velayutham v. Assistant Commissioner of Income-Tax reported in (2022) 442 ITR 74, dealt with the similar issue and has held as follows :

“7. ... Section 276C of the Income-tax Act is as follows :

"276C. Wilful attempt to evade tax, etc.—(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous

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imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person— (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement ; or (ii) makes or causes to be made any false entry or statement in such books of account or other documents ; or (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents ; or (iv) causes any other circumstance to exist Page 9 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof." 8.To prosecute a person there must be a wilful attempt on the part of the assessee to evade payment of any tax, penalty or interest. The Explanation to the above section makes it very clear that the evasion by way of any false entry or statement in the books of account or other document or omission to make any entry in the books of account or other documents or any other circumstances which will have the effect of enabling the assessee to evade tax or penalty or interest chargeable or imposable under this Act or the payment thereof. Though the Explanation is an inclusive one it is not the case of the Department that the assessee has made any false entry in the statements or documents or omitted to make any such entry in the books of account or other document or acted in any other manner to avoid payment of tax. It is not the case of the Department that the assessee has made an attempt to alienate the property in order to defeat the payment, etc. Therefore, when the return has been properly accepted and the assessment is also confirmed, mere default in payment of taxes in view of this court, unless such default arising out of any of the circumstances, which will have an effect of the assessee to defeat the payment, the word employed in the section, viz., "wilful attempt" cannot be imported to mere Page 10 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 failure to pay the tax. From the inception there is no suppression and even in the reply to the notice he has clearly stated the circumstances which forced him to such default. 9.It is also to be noted that section 140A of the Income- tax Act makes it very clear that any tax is based on any return filed by the assessee, the assessee shall be liable to pay such tax. Similarly, sub-section (3) of the section 140A reads as follows :

"140A.(3) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid, and all the provisions of this Act shall apply accordingly."

10. The above sub-section (3) of section 140A makes it very clear that in the event of failure to pay tax the assessee shall be deemed to be in default in respect of tax. The word "wilful attempt to evade the tax" is absent in section 140A(3). If, mere default in payment of tax in time is to be construed as a wilful attempt to evade the payment of tax the Legislature would have included the word "wilful attempt to evade the tax" in sub-section (3) of section 140A which is in fact absent. Therefore, in the event of mere default of Page 11 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 payment of tax in time, the wilful attempt to evade the tax cannot be imported to prosecute. To prosecute the person for penal action, the penal provision has to be strictly construed. Only if the circumstances and the conduct of the accused show the wilful attempt in any manner whatsoever to evade the tax or to evade the payment of any tax, penalty or interest, the prosecution can be launched. 11. The apex court in Tamil Nadu Housing Board v. Collector of Central Excise [1995] Supp (1) SCC 50 while dealing with section 11A of the Central Excises and Salt Act, 1944, has held that the word "evade" in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word "intent". In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law and held that when the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. 12. In Prem Dass v. ITO [1999] 236 ITR 683 (SC) ; (2001) 1 LW (CrI) 471 the honourable Supreme Court has held as follows (page 690 of 236 ITR) :

"8. Wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act under section 276C is a positive act on the part of the accused which is required to be proved to bring home the charge against Page 12 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 the accused. Similarly, a statement made by a person in any verification under the Act can be an offence under section 277 if the person making the same either knew or believed the same to be false or does not believe to be true. Necessary mens rea, therefore, is required to be established by the prosecution to attract the provisions of section 277. We see nothing in section 132(4A) which would establish the ingredients of the aforesaid two criminal offences contemplated under sections 276C and 277 of the Income-tax Act. It may be noticed at this point of time that the Tribunal while interfering with the penalty imposed under section 271(1)(c) of the Act came to a positive finding that there is no act of concealment on the part of the assessee and he had returned the income on estimate basis. The Tribunal, further found that it is a case purely on difference of opinion as to the estimates and not a case of concealment of income or even furnishing of inaccurate particulars of income."

13. In Vijaychandra Chandulal Shah v. State of Gujarat [1995] 213 ITR 307 (Guj) ; MANU/GJ/0054/1993 the Gujarat High Court has considered various judgments and held that mere failure to pay the advance tax, the offence is not attracted. The relevant portion of the judgment is as follows (page 313 of 213 ITR) :

"... Sub-section (2) of section 276C could be attracted only when a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act and not otherwise. The complaint is for offences punishable under section 276C(2) of the Act. In view of what is discussed above, it is very clear that there is not even a whisper that there is wilful attempt in any manner whatsoever to evade the payment of tax and hence the process issued is required to be Page 13 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 quashed and is hereby quashed."

14. In Union of India (UOI) v. Jiwai Lal Chironji Lal MANU/MP/0143/2010. The High Court of Madhya Pradesh (Gwalior Bench) has held as follows :

"22. From the minute analysis of the aforesaid judgments of the Supreme Court, it clearly emerges that the conduct of the assessee acquires importance, in relation to the proceedings of imposition of penalty or prosecution or conviction of the assessee and when the assessee satisfactorily demonstrate that he was having no intention of concealment of income, either deliberately or indeliberately, the conviction could not be sustained. In the circumstances of the present case also, it is apparent from the perusal of the record that there was no wilful attempt to evade tax or concealment of income on the part of the assessee-firm or false statement in verification and therefore, it would not be a case of 'wilful concealment of income' or even a case of furnishing of inaccurate particulars of income and therefore no fault could be found in the impugned judgment of the appellate court."

15. This court in Sayarmull Surana v. ITO [2019] 13 ITR-OL 4 (Mad) ; [2019] 306 CTR (Mad) 354 has held as follows (page 9 of 13 ITR-OL) :

"9. Further, the expression 'wilful' has been explained as follows in P. Ramanatha Aiyar's The Law Lexicon, Second Edition, 1977 :

"The question whether an act or omission is wilful arises oftener in criminal than in civil causes ; since in the former the general principle requiring the presence of mens rea excludes from criminality, acts done Page 14 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 accidentally and unintentionally and even acts done intentionally under honest but mistaken belief in the existence of facts which, if true, would have made the acts lawful or excusable.'.. .

13. Thus, in the peculiar facts and circumstances of the case, it cannot be stated that the accused was wilfully evading the payment of tax. But, unfortunately, the trial court had failed to appreciate the contention of the accused in the right perspective."

16. The High Court of Kerala in Forzza Projects Private Limited v. Pr. CIT [2021] 17 ITR-OL 483 (Ker) ; [2021] 279 Taxman 459 (Ker) followed the judgment of Prem Dass's case (supra) and held as follows (pages 488 and 489 of 17 ITR- OL):

"6. In view of the legal position settled by the apex court in Prem Dass's case (supra), it cannot be held that the legal position laid down by this court in G. G. Viswanathan v. ITO [1987] 167 ITR 103 (Ker) is good law. In the instant case, admittedly there is no concealment of any source of income or taxable item, inclusion of a circumstance aimed to evade tax or furnishing of inaccurate particulars regarding any assessment or payment of tax. What is involved is only a failure on the part of the petitioner to pay the tax in time, which was later on paid after availing instalment facility with interest. The penalty imposed is now pending consideration before the appellate authority. So it would not fall under the mischief of section 276C of the Income- tax Act.. ..

10. What is dealt with in Prakash Nath Khanna's case is the criminal liability that can be fastened under Page 15 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 section 276CC of the Act when there is wilful failure to furnish return. The expression 'failure' used in section 276CC of the Act is with respect to submission of assessment and return and the same cannot be equated with any failure to pay the tax in time and the liability under section 276C of the Act. A mere failure to pay the amount due (tax, interest or penalty) will not satisfy the requirement which would constitute the offence under section 276C(2) of the Income-tax Act. Hence the crime registered and the further proceedings thereof will not serve any purpose, if it is proceeded further. The same is quashed."

17. In Ganga Devi Somani v. State of Gujarat [2021] 437 ITR 323 (Guj) the High Court of Gujarat at Ahmedabad held as follows (page 336 of 437 ITR) :

"22.1 What the law requires is the intention to evade payment of taxes then it is not mere failure to pay the tax but must be something more. The assessee must be aware that the tax was leviable and such assessee deliberately avoids paying it. The word 'evade' in the context means defeating the provisions of law of paying tax."

18. Considering the above judgments and the mere failure to pay the tax in time without any intention or deliberate attempt to avoid tax in totality or without any mens rea to avoid the payment, the word employed "wilful attempt"

cannot be inferred merely on failure to pay tax in time. If the intention of the assessee to evade the payment of tax was present from the very inception, he would not have made Page 16 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 further payments. The statements filed by the Department would also indicate that he has continuously been paying the taxes from the year 2017 by instalments and he has paid the tax from 2016 till November 10, 2021 in around 40 instalments he has paid about Rs. 1,95,76,736. His conduct itself shows that there was no wilful attempt to evade payment of tax and the payment of tax in instalments in fact clearly probalilise his reply given to the show-cause notice which has not been taken note of by the Revenue.

19. It is also relevant to note that for non-payment of tax the attachment order was also passed on the immovable property of the assessee in the year 2016 itself. The authorities have attached the property till now keeping silent without making any recovery proceedings as contemplated under sections 222, 223 and 226 of the Act. It is also relevant to note that as per sub-section (4) of section 220 of the Act, if the tax is not paid within the time limit under sub-section (1) or extended under sub-section (3), as the case may be, the assessee shall be deemed to be in default. The word "Wilful" is also not included in the above legal fiction. Having attached the property the Department has not made any attempt to recover all the taxes. Therefore, when the immovable property was attached and the attachment is still continued, it is common knowledge that liquidating the asset is very difficult. Therefore, the Page 17 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 explanation offered by the assessee in this case for failure to pay the amount is very reasonable. The conduct of making payment of tax to the tune of Rs. 1,95,00,000 also clearly show that he never had an intention to defeat the provision of law by evading the payment of tax. As long as there is no deliberate act or wilful act on the part of the accused to evade the payment of tax, mere failure to pay the tax will not constitute the offence under section 276C(2). 20. In the judgment of the apex court relied on by the respondent in *Madhumilan Syntex Ltd. v. Union of India* [2007] 290 ITR 199 (SC) ; (2007) 11 SCC 297 cited to the effect that for non-payment of tax within the stipulated period, prosecution is maintainable. The above case is factually distinguished where the assessee-company having deducted the tax at source had failed to pay the tax deducted at source amount in time. In such circumstances the apex court took a view that they are not company or director not immune from prosecution. 21. In *Prakash Nath Khanna v. CIT* [2004] 266 ITR 1 (SC) ; (2004) 9 SCC 686 the prosecution launched for the offence under section 276CC was sought to be quashed. The plea before the apex court in the above case is that as the assessee has already submitted the levy of interest and also Page 18 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 penally he could not be prosecuted under section 276CC for the same default. The same was negatived by the apex court. Whereas in this case the prosecution is initiated only under section 276C(2) of the Act. Therefore, the above judgment is not applicable to the facts of this case. 22. In the judgment relied upon by the Department in *Arun Arya v. ITO* CRMC No. 205/2015, IA No. 01/2015 dated September 28, 2018 the High Court of Jammu and Kashmir at Jammu on the basis of the survey conducted by the Income-tax Department under section 133A of the Income-tax Act, tax was assessed. The above case is also not applicable to the facts of the present case as the above case is arising out of the survey and search which squarely fall within the Explanation to section 277 of the Income-tax Act. 22. In the judgment relied upon by the Department in *Arun Arya v. ITO* CRMC No. 205/2015, IA No. 01/2015 dated September 28, 2018 the High Court of Jammu and Kashmir at Jammu on the basis of the survey conducted by the Income-tax Department under section 133A of the Income-tax Act, tax was assessed. The above case is also not applicable to the facts of the present case as the above case is arising out of the survey Page 19 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 and search which squarely fall within the Explanation to section 277 of the Income-tax Act. 23. In *Sujatha Venkateshwaran v. Asst. CIT (Prosecution)* [2018] 408 ITR 545 (Mad) CrI. R. C. No. 615 of 2011 dated July 13, 2018 (Madras High Court) this court has rejected the revision filed by the assessee. In this case also the prosecution initiated was on the ground that the accused made false entry in the books of account and had shown a bogus payment to avoid tax. As those facts fall within the Explanation, which cannot be applied to the present case. 24. In *Konark Refrigerator v. Dy. CIT*, CrI. Petition No. 5964 of 2018 dated August 12, 2018 (Telangana High Court), the Telangana High Court took a view that as the assessee has not paid the tax within the period stipulated under section 140A of the Act, the prosecution initiated against him is maintainable. I respectfully disagree with the above view. The provisions of section 140A on failure of payment will not make the assessee as wilful defaulter. Therefore, the above judgment is also not applicable to the facts of the case on hand. 25. Taking the overall facts and the nature of the complaint, this court is of the view that prosecution in this case is nothing but sheer waste of time and there was no intention Page 20 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 or wilful attempt made by the assessee to evade the payment of tax. Only he expressed his inability and mere failure to pay a portion of the tax cannot be construed to mean that he has wilfully attempted to evade the payment of tax." 8. This Court, in the above judgment in *S.P. Velayutham's case* (supra) has taken note of various precedents of the Hon'ble Supreme Court and has ultimately held that, to prosecute a person, there must be a wilful attempt on the part of the assessee to evade payment of any tax, penalty or interest. The said judgment has also attained finality. The explanation to Section 276C(2) of the IT Act makes it very clear that the evasion by way of any false entry or statement in the books of account or other document or omission to make any entry in the books of account or other documents or any other circumstances which will have the effect of enabling the assessee to evade tax or penalty or interest chargeable or imposable under the Act or the payment thereof, alone can be prosecuted. Though the explanation is an inclusive one, it is not the case of the Department in the present case that the assessee has suppressed the real income or has not disclosed any other source of income or has fabricated documents or has made any false entry in the statements or documents or omitted to make any such entry in the Page 21 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 statements or documents or omitted to make any such entry in the books of account or other document or acted in any other manner to avoid payment of tax. The only allegation is that there is a delay in payment of tax. Therefore, mere default in payment of taxes, unless such default arises out of any circumstances which will have an effect of the assessee to defeat the payment, in the view of this Court, the word employed in the Section, i.e., "wilful attempt" cannot be imported. 9. Further, though it is true that the assessee did not make the payment of tax while filing its return of income or even after issuance of notices, the fact remains that there is no suppression of real income and the assessee has made the entire payment of the tax liability on 13.01.2025 after issuance of show cause notice on 02.12.2024. If the intention of the assessee to evade the payment of tax was present from the very inception, the assessee would have not made the payments even thereafter. As per Sub-Section (4) of Section 220 of the IT Act, if the tax is not paid within the time limit under Sub-Section (1) or extended under Sub-Section (3), as the case may be, the assessee shall be deemed to be in default. The word "wilful" is conspicuously absent in Section 220 of the IT Act. Therefore, as long as Page 22 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 the default is not wilful, mere delay in payment of tax will not attract the penal provisions. There are many other provisions under the Act even to impose fine or penalty for delayed payment. However, to prosecute a person, the act must be deliberate and mens rea should be present to commit the wilful default so as to attract the offence

under Section 276C(2) of the IT Act. However, in the present case, the assessee is a mere defaulter and it cannot be construed as a willful attempt made by the assessee to evade the payment of tax, nor is there any presence of mens rea so as to attract the offence under Section 276C(2), particularly, when the assessee has paid the entire tax liability after issuance of show cause notice. 10. Therefore, continuation of prosecution under Section 276C(2) of IT Act as against the petitioners will only be a futile exercise and an abuse of process of law, which will definitely infringe the rights of the petitioners. Therefore, this Court is of the view that it is a fit case to quash the complaint in exercise of its powers under Section 528 BNSS. 11. Accordingly, this Criminal Original Petition is allowed and the complaint in E.O.C.No.5 of 2025 on the file of the learned Additional Page 23 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 Chief Metropolitan Magistrate (Economic Offences)-II, Egmore, Chennai, is quashed. Consequently, connected miscellaneous petitions are closed. 07.10.2025 mkn Internet : Yes Index : Yes / No Speaking order : Yes / No Neutral Citation : Yes / No To 1. The Additional Chief Metropolitan Magistrate (Economic Offences)-II, Egmore, Chennai. 2. The Deputy Commissioner of Income Tax, Central Circle-1(2), Investigation Building, Nungambakkam, Chennai – 600 034. 3. The Public Prosecutor, High Court, Madras. Page 24 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 N. SATHISH KUMAR, J. mkn CrI.O.P.No.22880 of 2025 Page 25 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm) CrI.O.P.No.22880 of 2025 07.10.2025 Page 26 of 26 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 15/10/2025 01:58:29 pm)